

CANADA / JUDGMENT

## Javaheri v. Heidari

2020 BCSC 816

### COURT

Supreme Court of British Columbia

### DECIDED

3 June 2020

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2020 BCSC 816 Javaheri v. Heidari

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Javaheri v. Heidari,

2020 BCSC 816

Date: 20200603

Docket: E180584

Registry: Vancouver

Between:

Setareh Javaheri

Claimant

And

Mahdi Heidari

Respondent

Before: The Honourable Mr. Justice A. Saunders

Reasons for Judgment

Counsel for the Claimant, appearing December 11-13, 2019 only:

J.C. Fiddes

The Claimant, appearing in person:

S. Javaheri

Counsel for the Respondent:

M. Guy

Place and Date of Trial:

Vancouver, B.C.

September 3-6, 9-13, 17-18;

December 11-13, 2019

Written Submissions of the Claimant Received:

January 9 and February 6, 2020

Written Submissions of the Respondent Received:

January 17, 2020

Place and Date of Judgment:

Vancouver, B.C.

## **June 3, 2020**

- [1] Ms. Javaheri brings this action under the Family Law Act, S.B.C. 2011, c. 25 [FLA], claiming spousal support and division of property. The threshold issue is whether the parties were spouses.
- [2] The governing provision is the definition of "spouse" set out in s.3 of the FLA:
- (1) A person is a spouse for the purposes of this Act if the person
  - (b) has lived with another person in a marriage-like relationship, and
  - (i) has done so for a continuous period of at least 2 years .
- [3] The burden of proof lies with Ms. Javaheri. For the reasons set out herein, I do not find she has met that burden. It is not necessary for me to determine whether the parties' relationship ever reached the point of being marriage-like, with all that entails. Rather, I base my decision on evidence of the duration and continuity of the time in which the parties lived together. Specifically, even if their relationship could be said to have become marriage-like at any point in time, I am not satisfied that any marriage-like cohabiting relationship could have had a duration of as long as two years; and in any event, I find as a matter of fact that the parties' co-habitation was not continuous over the two-year period Ms. Javaheri alleges it lasted.

- [4] The background, briefly, is that the parties first became acquainted in the summer of 2014, through an online singles forum that catered to members of the Iranian-Canadian community. Mr. Heidari was then 43 years old. He had lived in Vancouver since 1996, and had established himself as a successful real estate developer. He had been twice married, relationships that each lasted a year or less. Ms. Javaheri was 45 years old. She was living with her mother and sister in Ottawa, and working as a real estate agent.
- [5] After a period of regular telephone conversations, Mr. Heidari visited Ms. Javaheri in Ottawa in October 2014, and she visited him in Vancouver in November. Ms. Javaheri moved to Vancouver with her mother and sister in December. Eventually she and Mr. Heidari began seeing each other regularly.
- [6] For the most part the parties agree only on the broad outlines of their relationship as it unfolded thereafter. Where there is irrefutable documentary or photographic evidence of them being in certain locations at certain times, attending events or undertaking tasks together, they also agree. But they disagree on just about everything else. For almost every document tendered by Ms. Javaheri - dozens of photographs, emails and text messages, correspondence addressed to her at his apartment or condo, the address shown on her driver's licence - Ms. Javaheri suggests one interpretation, but Mr. Heidari offers a different explanation. The number of contradictions and inconsistencies was simply dizzying. Both parties called collateral evidence from friends and family members. Much of the evidence of those witnesses was impressionistic and inconclusive.
- [7] Ms. Javaheri's evidence is that she and Mr. Heidari became engaged in August 2015, and they began co-habiting on September 22, 2015, when she says she moved from the apartment on Keefer Street, Vancouver, that she shared with her mother, into Mr. Heidari's rented apartment on Bellevue Avenue, West Vancouver.
- [8] From that day until their separation, which she says was in November 2017, Ms. Javaheri testified that she and Mr. Heidari were inseparable, and spent every night together, except when he went abroad: they were together either in his Bellevue Avenue apartment; or in his condo on Beach Crescent in Vancouver, which she says they moved into after he purchased and renovated it in the spring of 2017; or at her brother's condo on Hornby Street in Vancouver, where she says they stayed together briefly, for about a week, between moving out of Bellevue Avenue and into Beach Crescent; or on many trips abroad they took together.
- [9] Mr. Heidari denies having been in a marriage-like relationship with Ms. Javaheri at any time. He denies they were ever engaged; there is in evidence a video of him presenting Ms. Javaheri with a ring, on bended knee, in the presence of members of her family, but he says that was a sham, enacted at Ms. Javaheri's request. Ms. Javaheri later gave him a ring, but he says it was only ever worn by him as a "friendship" or "promise" ring, and that he wore it mostly when pressured by her to do so.

- [10] Mr. Heidari's evidence is that after they began dating, and up to the fall of 2015, he and Ms. Javaheri had an "on-again off-again" relationship, arguing frequently and sometimes breaking up for weeks at a time. He acknowledges that they took many trips abroad together, and attended numerous dinners, parties and get-togethers with friends and family, as a couple. They also discussed the possibility of a future together. However, he says that whenever the subject of a wedding came up he told Ms. Javaheri that he would need to get to know her over two or three years, and he would need them to be able to go for at least six months without arguing. He did, in his testimony, acknowledge two periods of co-habitation, first from the end of October 2015 until February 2016; and again from August 2017 until October 2017.
- [11] Mr. Heidari testified that during those periods when the relationship was "on-again", Ms. Javaheri would stay at his Bellevue Avenue apartment for a night or two, but otherwise was living with her mother. Ms. Javaheri's mother returned to Iran temporarily in September 2015, and Mr. Heidari says Ms. Javaheri was then "back and forth" to his apartment frequently; because, Mr. Heidari says, she didn't want to be alone. The lease on her Keefer Street apartment was up at the end of October, and Ms. Javaheri then moved in with him. On October 28, 2015 Ms. Javaheri completed paperwork to be added on Mr. Heidari's tenancy agreement as an occupant of his apartment; he testified that he knew he was obliged to have her do so, as she was going to be staying for more than a couple of months. A copy of his tenancy agreement in evidence notes that the landlord approved of her occupancy on November 2. Mr. Heidari puts the date of Ms. Javaheri "officially" moving in as sometime between October 28 and November 2, 2015.
- [12] This living arrangement continued, Mr. Heidari testified, until late February 2016, when Ms. Javaheri's mother returned from Iran. Her mother stayed in a hotel for a week initially, and then Ms. Javaheri found her another apartment, on West 12th Street in North Vancouver. Mr. Heidari says Ms. Javaheri then gradually moved back in with her mother, removing most of her clothing and possessions from his place. He testified that their "on-again off-again" relationship then resumed, and that they did not live together continuously after February 2016 until they tried cohabiting again in August 2017.
- [13] The parties agree that at the end of September 2016 Ms. Javaheri's mother moved into a condo on Hornby Street, Vancouver. Mr. Heidari says that Ms. Javaheri was then keeping some things at his apartment, but continued to live with her mother, at that Hornby Street address. Ms. Javaheri disagrees, and says, as I have summarized above, that she and Mr. Heidari were continuously in a marriage-like relationship throughout this time, living together at his Bellevue Avenue apartment.

- [14] Regardless of whether the parties' relationship was ever "marriage-like", and whatever the exact dates of their cohabitation were up to the spring of 2017, on the evidence of both parties there was a significant emotional breach in early April 2017, on the eve of a trip Mr. Heidari was taking to Iran, when they had a serious argument. Both parties agree this argument took place. Ms. Javaheri said the relationship was over, that she no longer wished to see him, and that when he was gone she would take her things from his apartment.
- [15] Mr. Heidari was away in Iran for about four weeks. He testified that he sent her a few texts when he was away. He returned to find that she had removed from his apartment what things she had had there, and there was rotten food in his refrigerator. They did begin seeing each other again. They even shopped for a mattress together, in late May. But Mr. Heidari says Ms. Javaheri did not then move her things back into his home.
- [16] Ms. Javaheri acknowledges there was an argument, and that she did suspect Mr. Heidari of infidelity. She also says that when he got home she did move her things out of his apartment and went to her mother's, but testified this was only for two or three days, to show her frustration. She testified that she and Mr. Heidari then had a dinner together, reconciled, and their co-habitation resumed.
- [17] Ms. Javaheri does acknowledge, however, that this argument did impact their relationship; from that point on, she testified, she only wore occasionally what she says was the engagement ring Mr. Heidari had given her, and she could not recall if he ever again - up until what she says was their date of separation, November 23, 2017 - wore the ring she had given him. Ms. Javaheri also testified that after they reconciled following Mr. Heidari's return from Iran, they did begin arguing "a little bit more", and she said that she had lost her trust in him.
- [18] As will be seen in my more detailed discussion of the evidence, below, I do not decide the key issues of the duration and continuity of the parties' relationship only on the fact that this argument occurred. However, the argument does provide context for other highly significant evidence as to whether the parties did live together continuously through the spring and summer of 2017. I discuss that evidence below.
- [19] Before leaving for Iran Mr. Heidari had purchased his condo on Beach Crescent. He testified that since he was undertaking renovations the condo was not ready when he moved out of Bellevue Avenue, and so he stayed with Ms. Javaheri in her apartment on Hornby Street for a few days. He moved into the Beach Crescent condo at the end of May 2017. In late July 2017, Mr. Heidari testified, he and Ms. Javaheri again began to talk of living together, and in August Ms. Javaheri moved in with him. He described their relationship as difficult and unhappy. I describe below his evidence of the circumstances.

- [20] Ms. Javaheri says that throughout this period, after their reconciliation following his return from Iran, she and Mr. Heidari resided together continuously, at Bellevue Avenue, then for about a week at Hornby Street, and then moved into the Beach Crescent condo together, at the same time.
- [21] Before turning to a more focused discussion of the evidence, I make these observations as to the parties' credibility. I do not wholly accept the evidence of either of them. Both of them showed reluctance to concede obvious points that might assist the other's case. Mr. Heidari's evidence in cross-examination was marked by supposed lapses in memory which seemed convenient, to say the least, and he was not entirely responsive to questions put to him by Ms. Javaheri's counsel. He was shown to have acted deceptively in dealings with immigration authorities, concocting a story that enabled one of Ms. Javaheri's brothers to secure a visa.
- [22] However, my greater reservations were with the testimony of Ms. Javaheri, and to a considerable extent. Some of my concerns no doubt stem from her having been self-represented through much of the trial, being unfamiliar with trial process and perhaps being emotionally overwhelmed. But even making generous allowance for such factors, Ms. Javaheri was simply not a credible witness. She repeatedly made grandiose statements, including exaggerating the significance of various documents. She made assertions as to having contributed to Mr. Heidari's business success that were simply outlandish. Through cross-examination, counsel for Mr. Heidari demonstrated numerous incidents of deceitfulness and manipulation on her part. She was shown to have acted in the manner of someone who thinks that rules exist for other people, not her. The crowning point came when it emerged, on the morning of the ninth day of trial, that Ms. Javaheri, though she acknowledged knowing that recording devices are prohibited, had been surreptitiously recording the trial proceedings on her phone.
- [23] There were two pieces of particularly significant evidence that I find contradicted Ms. Javaheri's claim that she and Mr. Heidari resided together continuously during the spring and summer of 2017. The first is the testimony of Sirus Memarzadeh, the husband of Mr. Heidari's sister, who has known Mr. Heidari for about 10 years. Notwithstanding this relationship and the associated possibility of bias, and notwithstanding some inconsistencies in Mr. Memarzadeh's timeline - the sequence of events - I found his testimony as to his interactions with the parties credible, and compelling.
- [24] Mr. Memarzadeh first met Ms. Javaheri in November 2014, at a family birthday party the parties attended together. Through 2015 to late 2017, he socialized with the parties on a few occasions. His understanding was that the parties were boyfriend/girlfriend; he never understood they were engaged, and Mr. Heidari never indicated to him that they had plans to marry. As to whether and when the parties ever co-habited, on the one hand Mr. Memarzadeh testified that he understood the parties did live together at Mr. Heidari's apartment on Bellevue Avenue; he was not precise as to what month it was, but he did recall visiting the Bellevue apartment in 2016, and that Ms. Javaheri was then living there. That

evidence, I note, does not contradict Mr. Heidari's testimony, as Mr. Heidari does admit Ms. Javaheri lived with him on Bellevue Avenue between November 2015 and February 2016, at the time her mother was away in Iran. On the other hand, however, Mr. Memarzadeh also testified that he came to see Mr. Heidari's Beach Crescent condo shortly after Mr. Heidari moved in, which he thought was "definitely before June" 2017. His memory of the specific date was possibly inaccurate, as the parties both agree that Mr. Heidari only moved into the condo on or around May 28th. However, Mr. Memarzadeh clearly recalls that Ms. Javaheri was then living there as well. It may be this was possibly only an impression on Mr. Memarzadeh's part, but if that impression was correct it would not accord with Mr. Heidari's timeline. This was a point where Mr. Memarzadeh's testimony did not unambiguously support Mr. Heidari's case, and I find this point offset any concern I might otherwise have had as to Mr. Memarzadeh's objectivity arising out of his relationship with Mr. Heidari. As a whole, Mr. Memarzadeh's testimony did not seem to me to have been contrived in any way to favour Mr. Heidari's position over Ms. Javaheri's.

- [25] Mr. Memarzadeh offered that evidence of being in the Beach Crescent condo shortly after Mr. Heidari moved in, in the course of describing a later occasion when Mr. Memarzadeh stayed there overnight. He testified that later in the month of June 2017, he met Mr. Heidari downtown for drinks. They ended the evening at Mr. Heidari's condo, and Mr. Memarzadeh slept in the guest room. When he woke in the morning, he asked Mr. Heidari where Ms. Javaheri was; Mr. Heidari replied that they had argued, and she wasn't living with him anymore. Mr. Memarzadeh testified that Ms. Javaheri's "stuff" was gone; there were no women's things in the condo.
- [26] Further, Mr. Memarzadeh testified in cross-examination that sometime in August 2017, as he recalled it, Ms. Javaheri came to his clinic for a treatment. (Mr. Memarzadeh is a practicing physiotherapist.) They started chatting. Ms. Javaheri was critical of Mr. Heidari. She said he was a cheater, a liar, and not a good person, and made other disparaging comments. He asked her, why then are you living with this guy? Ms. Javaheri replied that they already had broken up.
- [27] Ms. Javaheri's response to this testimony was to challenge Mr. Memarzadeh as to why she would have shared such private information with him. I had to repeatedly warn Ms. Javaheri not to engage in such argument with the witnesses. But dealing with that as a matter of argument, I will say that Ms. Javaheri gave a very strong impression as being someone so self-absorbed that she would think nothing of sharing personal details with a person with whom she was only casually acquainted. I give no weight to that protest, and I accept Mr. Memarzadeh's evidence as establishing that the parties were not living together continuously through the spring and summer of 2017, consistent with Mr. Heidari's testimony.
- [28] This finding is reinforced by the second piece of significant independent evidence from this time period, which is the addresses on notices sent to Ms. Javaheri by Canada Revenue Agency ("CRA"). On June 1, 2017 CRA issued to Ms. Javaheri a notice of assessment of her

2015 income tax. It was addressed to her at Mr. Heidari's apartment, on Bellevue Avenue in West Vancouver. The next correspondence, chronologically, from CRA in Ms. Javaheri's document production was a notice of reassessment for 2015, issued on August 31, 2017, which was addressed to Ms. Javaheri at the Hornby Street condo Ms. Javaheri says was solely occupied by her mother.

- [29] Ms. Javaheri was challenged, in cross-examination, as to why she used the Hornby Street address for correspondence at that time if she was actually living with Mr. Heidari. Ms. Javaheri said she recalled that when she and Mr. Heidari were living on Bellevue, she had not received some mail she was expecting; at one point she had asked CRA for her "papers" because she was looking to get a mortgage, but never received them, and so she called CRA and asked that the papers be sent to her mother's on Hornby Avenue, which was "more safe". She then, she testified, changed her address back. At first she said she changed it back to Bellevue; hesitating, she added, "or to Beach". Then, later in her testimony, she repeated that what she remembers is changing her address back to Bellevue.
- [30] That whole response seemed improvised, and made little sense as an explanation for the address on the 2015 reassessment notice. Accepting that Ms. Javaheri did genuinely recall having changed her address on file with CRA "back to Bellevue" at some point in time, she had no reason to have done so after June 1, 2017, the date the first assessment notice was issued, since Mr. Heidari - and, according to her, Ms. Javaheri - hadn't lived at the Bellevue apartment since mid-May 2017. Further, if, as she now maintains, she in fact moved with Mr. Heidari to the Beach Crescent condo and lived with him there continuously through the summer of 2017, why would she not have provided the Beach Crescent address to CRA, rather than her mother's?
- [31] The more probable explanation, I find - consistent with Mr. Memarzadeh's evidence that Ms. Javaheri was not living at Beach Crescent in late June 2017, and with his evidence of Ms. Javaheri telling him in August 2017 that they had broken up, and also with Mr. Heidari's testimony - is that regardless of the nature of their relationship prior to late June 2017, Ms. Javaheri and Mr. Heidari were not in fact living together continuously through the spring and summer of 2017, that they had separated, and that for a lengthy time Ms. Javaheri in fact lived with her mother at the Hornby Street condo. I find that to have been the case.
- [32] Section 3 of the FLA stipulates that one of the elements of a spousal relationship is whether the parties' two-year period of co-habitation is continuous. Similar requirements of continuity are set out in the legislation of other provinces that governs spousal relationships outside a formal marriage. In *Re Sanderson and Russell* (1979), 24 O.R. (2d) 429 (C.A.), Morden J.A. discussed the meaning of the phrase "who have cohabited continuously" as found in the definition of "spouse" in the Family Law Reform Act, 1978 (Ont.), c. 2, s.14:

Undoubtedly the meaning of "cohabited continuously" will be tested from different vantage-points in a great variety of situations. "Cohabit" is defined in s. 1(b) of the Act as meaning "to live together in a conjugal relationship, whether within or outside marriage". Put into more every-day

language this means to live together as a husband and wife or, as His Honour Judge Honey put it in *Re Feehan and Attwells* [(1979), 24 O.R.(2d) 248 (Ont. S.C.)], to live together "in a 'marriage-like' relationship outside marriage". Without in any way attempting to be detailed or comprehensive, it could be said that such a relationship has come to an end when either party regards it as being at an end and, by his or her conduct, has demonstrated in a convincing manner that this particular state of mind is a settled one. While the physical separation of parties following "a fight" might, in some cases, appear to amount to an ending of cohabitation the test should be realistic and flexible enough to recognize that a brief "cooling-off" period does not bring the relationship to an end. Such conduct does not convincingly demonstrate a settled state of mind that the relationship is at an end.

[Emphasis added.]

- [33] I respectfully adopt this approach to the question of whether a brief interruption in co-habitation negates a finding that the co-habitation has been continuous. If I were to accept Ms. Javaheri's evidence, and find that the parties did resume cohabitation very shortly after Mr. Heidari's return from Iran in late April 2017, after she had moved out for only a few days, it would be open to me to find that there was no interruption in continuity. However, I conclude that the separation of the parties at that time was much longer. It was in all probability more than a brief "cooling-off" period, and would have signalled an intention on Ms. Javaheri's part to bring their co-habitation to an end. I accept Mr. Heidari's testimony that the parties' co-habitation did not resume until sometime in the month of August 2017.
- [34] Further, aside from the issue of whether the alleged marriage-like relationship was continuous, there is the question of its duration.
- [35] As to when continuous co-habitation commenced, Ms. Javaheri, as I described above, maintains the start date was on September 22, 2015. On that day she changed the address on her driver's license to the Bellevue Avenue apartment. (Mr. Heidari denies knowing of this at the time; Ms. Javaheri says they attended the licensing office together.)
- [36] There is evidence inconsistent with co-habitation having commenced on that date.
- [37] In an email to the counsellor the parties sought assistance from in October 2017, Ms. Javaheri said that they moved in together in October 2015.
- [38] Another inconsistency is found in the testimony of Mr. Heidari's close friend, Ms. Levasseur. Ms. Levasseur was for the most part responsive and careful in her answers, and I found her testimony entirely credible. She met Ms. Javaheri through Mr. Heidari in the spring of 2015. One of the topics of her examination-in-chief was that Ms. Levasseur has a precise recollection of attending a dinner party that Ms. Javaheri hosted on October 1, 2015, at the Keefer Street apartment in Vancouver. Ms. Javaheri's mother had gone to Iran, her sister was in Los Angeles, and Ms. Javaheri was living there alone. Ms. Levasseur remembers Ms. Javaheri remarking that she was scared of living alone, and either she wanted to or intended to live with Mr. Heidari. In her cross-examination of Ms. Levasseur, Ms. Javaheri challenged

that recollection of what she said during that dinner, as well as several other aspects of Ms. Levasseur's testimony. She did not challenge Ms. Levasseur on where and when the dinner took place. Ms. Javaheri did make some headway in calling into question the reliability of some aspects of Ms. Levasseur's testimony, but not on her particular evidence of what Ms. Javaheri said on the October 1st dinner, and not on Ms. Levasseur's credibility overall. I accept Ms. Levasseur's testimony as evidence that the parties were not living together as early as Ms. Javaheri contends.

- [39] Further inconsistencies with a September start date are found in Ms. Javaheri's telephone records. Those records show her and Mr. Heidari having had lengthy late-night conversations in October 2015: on Friday October 16, a 42-minute call between 10:21 pm and 11:03 pm; and on Wednesday October 21, a 27-minute call between 9:50 pm and 10:17 pm. Ms. Javaheri produced no evidence of such late night calls after the end of October 2015, during the period when Mr. Heidari admits they did live together. Asked on cross-examination to account for these late-night calls, Ms. Javaheri said that Mr. Heidari would often call her during business meetings when he was bored. That proposition was not put to Mr. Heidari on cross-examination and I do not find it is a likely explanation for such long calls, so late at night. This evidence of the October phone calls clearly casts doubt on Ms. Javaheri's contention that their continuous co-habitation began in September 2015, and on her credibility generally.
- [40] The preponderance of the evidence favours Mr. Heidari's position that they did not begin co-habiting until late October 2015, as the lease on the Keefer Street apartment was running out. The parties may have, as early as September 22, been discussing Ms. Javaheri moving in with Mr. Heidari. But I find she did not actually do so until more than a month later. I accept Mr. Heidari's evidence that their co-habitation began no earlier than October 28, 2015.
- [41] As to the relationship's ending, as I have described above Mr. Heidari's evidence is that their relationship through the late summer and early fall was not a happy one. He testified that after Ms. Javaheri's birthday on August 21, 2017 they were having severe arguments, "almost non-stop". Ms. Javaheri on the other hand says they were arguing, but were also trying to work out their problems.
- [42] There is in evidence a string of text messages the parties exchanged early the evening of September 24, 2017, which gives credence to Mr. Heidari's testimony. It begins with Ms. Javaheri asking him if he is at a supermarket. He replied:

No and don't worry where I am. You have your family to be with so just let me deal with my life. We should leave each other free.

Ms. Javaheri responded that they need to do counselling to learn how to make their relationship better. Mr. Heidari replied, "I'm not interested in that".

- [43] The parties both agree there was another serious argument, on October 11, 2017. Ms. Javaheri went out drinking with a female companion. They returned to the Beach Crescent condo. Ms. Javaheri vomited in the lobby. She did not clean it up. She went upstairs to the condo, yelled at Mr. Heidari, and slapped him. All this is admitted by Ms. Javaheri. The incident led to Mr. Heidari being issued a notice of bylaw infraction by the strata management company.
- [44] Mr. Heidari testified that the next morning, he told Ms. Javaheri that he had no interest in continuing their relationship, it was over. He asked her to find her own place and remove her belongings. She asked to stay for a week or two, as one of her brothers was staying with her mother. He agreed. At her request, they did go to a few sessions of counselling together. He testified that she continued to sleep in the condo, sometimes in the same bed, but were no longer intimate. In late October he sent her an email message, entitled "To Whom This May Concern", in which said:

After living together for few months around mid Oct. 2017 we decided to break up again as the result of having too many problems, misunderstandings and arguments.

As of right now we have decided to breakup and move on with life on our own path and work on our issues.

- [45] In her examination-in-chief, Ms. Javaheri said there were "lots of problems" in their relationship in October 2017, and she suggested they attend counselling. They went twice. She testified that a few days after the second counselling session, the "To Whom This May Concern" email came "out of the blue". She said that some of the things in that email were true, but that Mr. Heidari "wants to make it look like we are breaking up". In cross-examination, she admitted the details of the argument on October 11, but denied there was any breakup at that time.
- [46] Ms. Javaheri testified that she considers they did not break up until November 23, 2017, when Mr. Heidari sent her a text message, when he was on a trip to Thailand. The message reads:

Setareh this was a very bad and shameful language you used earlier today talking with me on the phone. I understand you are not happy but I can not imagine you allowed yourself using these words with me and accusing me of all kind of things.

This has been one of the main problems since the beginning of our relationship I can no accept this any longer. We are not together any more so leave me alone.

Do not call me again. If there is an argent [sic] matter text or email me, only.

- [47] To support her contention that their relationship, which she says was marriage-like, did not come to an end any earlier than November 23, Ms. Javaheri pointed to two other pieces of evidence. One is a card she says Mr. Heidari sent her the day after he sent the "To Whom This May Concern" email, in which he apologized: "I'm really really sorry for yesterday. Love you". The card is undated. Mr. Heidari says he gave her that card in 2016.
- [48] The other piece of evidence is a "selfie" cell phone photo of the two of them in bed together, dated October 28, 2017 at 7:42 a.m. Ms. Javaheri appears to be fully made up with facial and eye cosmetics; Mr. Heidari is lying next to her, apparently asleep, wearing an eye mask. It is, to say the least, an unusual photograph. Ms. Javaheri testified that she and her sister Asrin had been talking on the phone that morning; Asrin asked what she was doing, and Ms. Javaheri sent her the photo.
- [49] Asrin testified as to an exchange of text messages she had with Mr. Heidari on the afternoon of October 28. Asrin recalls that a day or two previously Ms. Javaheri had told her that she was upset because "he had done this through an email to me"; I find that Ms. Javaheri was then referring to the "To Whom This May Concern" email. I accept Asrin's evidence that there was such a phone call between her and her sister, on October 26 or 27.
- [50] Asrin agreed that Ms. Javaheri may (as Ms. Javaheri attested to) have sent her the photograph during a phone conversation on the morning of October 28, as, Asrin said, that was the kind of thing they often did. She had some recollection of calling her sister to check on her. However, later the afternoon of October 28, Asrin sent a text to Mr. Heidari:

I talked to seti and she told me about the separation. I was saddened and shocked

Mr. Heidari replied:

I'm not happy with this too but also for past few months things have got worst and I'm not the kind of person who can live long under unhappy lifestyle or stress. I think we have both tried but our personalities are different

- [51] I find that this photograph cannot stand as evidence that the parties were still in a continuous, marriage-like relationship when it was taken on the morning of October 28, 2017. Ms. Javaheri may have sent Asrin the photograph for an innocent purpose; perhaps, to assure Asrin that she was well. It is not likely, however, that she did so to prove to Asrin that all was well between her and Mr. Heidari as a couple - the meaning she now seeks to attribute to the photograph - because that would not be consistent with Asrin still being under the impression, as shown in her text message sent later that day, that she and Mr. Heidari had separated.
- [52] Ms. Javaheri's banking records show that on October 20, 2017 she paid Mr. MacLean, a family lawyer, \$675.00. She made further payments to Mr. MacLean on October 27, of \$2,500.00 and \$1,000.00. Ms. Javaheri testified that was a retainer paid to Mr. MacLean to draft a cohabitation agreement. No one from Mr. MacLean's office was called to corroborate that explanation. Given that Ms. Javaheri was then telling her sister that she and Mr. Heidari

had separated, I do not accept that explanation. It is far more likely that she was consulting a lawyer as to her rights upon breakup of the relationship.

- [53] Although Ms. Javaheri contends that their breakup did not happen until the November 23, 2017 email Mr. Heidari sent to her from Thailand, she did not point to any event having occurred between October 28 and November 23 that could have precipitated a breakup. Further, the implication of the November 23 email is not that it is announcing a breakup; instead, it is confirming a breakup that has already taken place. I find that Ms. Javaheri's testimony that the breakup did not happen until the November 23 email was contrived to provide her grounds to argue for a two-year cohabitation.
- [54] I find that any period of continuous cohabitation began no earlier than October 28, 2015. If the parties' relationship did ever reach the point of being "marriage-like", I am not satisfied - meaning, the claimant has not met her burden of proof - that it was still in that state two full years later. I accept that Mr. Heidari told Ms. Javaheri on October 12, 2017 that the relationship was over, and that he wanted her to move out. His text message to Asrin on October 28 is more consistent with him having intended a break-up with Ms. Javaheri, as opposed to simply taking a cooling-off period. I accept his evidence that they were not intimate after October 12. I am not satisfied that there was any mutual intention from October 12, 2017 onwards to be together in a marriage-like relationship.
- [55] Moreover, and in any event, I also, for the reasons stated above, find that the parties had ceased co-habiting for a period of two months or more, in the spring and summer of 2017. If there was any marriage-like relationship, it therefore could not have been continuous over the course of any two-year period.
- [56] Given those findings, it is not necessary to determine whether the parties' relationship at any point in time did in fact reach the stage of becoming "marriage-like".
- [57] The claim is dismissed.
- [58] Mr. Heidari, as requested, is granted leave to make submissions as to costs. The parties will make their arguments in writing, in Word (.doc or .docx) or in searchable .pdf format, and will submit them as attachments to emails sent to Supreme Court Scheduling, Vancouver. Cases should be cited with the neutral citation, where possible; copies of cases are not necessary. The Respondent's written argument will be submitted and served within 14 days of the date of these Reasons. The Claimant's argument will be submitted and served within 14 days after service of the Respondent's argument. The Claimant will then have 14 days for a Reply.

"A. Saunders J."

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